

AMENDMENTS TO THE DRAWING FIGURES

Please replace originally-filed drawing sheet 2/5, which includes FIG. 3 and FIG. 4, with the enclosed REPLACEMENT DRAWING SHEET 2/5, which includes an amended FIG. 3.

REMARKS

Claims 1-15 are pending in this application. Claims 16-21 are withdrawn from consideration, as being directed to non-elected subject matter, in response to the restriction requirement mailed September 1, 2006.

Paragraph [0022] of the specification and FIG. 3 on drawing sheet 2/5, as originally filed, have been amended to specifically identify (with reference number 254) the inner surface of the outer layer, of the described and depicted multi-layer film. This inner surface, which may be a printed surface, is described, for example, in claim 6 as originally filed.

Independent claims 1 and 9 have been amended to recite that the container (or pouch) is formed either (1) from a unitary sheet of material or (2) from separate sheets having bottom edges that are welded in the same manner as the side edges. These alternatives are set forth in the specification, for example, in paragraph [0020] on page 5. Claims 1 and 9 have also been amended to recite that the container (or pouch) comprises a detachable straw. Support is found in the specification, for example, in paragraph [0021] on page 5.

Claim 1 has also been amended to clarify the antecedent basis for the term “second side edge.”

Claims 2, 11, and 13 have been amended to recite that the frangible element covering the opening of the fitment comprises a pierceable barrier seal. Claims 3, 12, and 15 have been amended to recite that the pierceable barrier seal comprises aluminum foil or ethylene vinyl alcohol. Support is found in the specification, for example, in paragraphs [0021] and [0025] on pages 5 and 7, respectively.

Claim 13, line 2, has also been amended to clarify that the fitment comprises a tapered body, as recited in line 3 of this claim, and also described in the specification in paragraph [0024] on page 7.

The amendments add no new matter.

### **Drawing Objections**

The Office Action objects to the drawings as not showing the features of claim 6, and in particular the inner surface of the transparent panel outer layers, which can be a printed surface.

As requested, Applicant has amended FIG. 3 to specifically identify the inner (optionally printed) surface of the outer layer.

Reconsideration and withdrawal of the drawing objections are respectfully requested.

### **The Rejections over Seward *et al.*, U.S. Patent No. 4,886,674 (“Seward”)**

The Office Action makes the following rejections of claims 1-5, 9, and 10 under 35 U.S.C. § 102(b) or § 103(a):

- Claims 1, 2, 4, 9, and 10 as anticipated under 35 U.S.C. § 102(b) by Seward, and
- Claims 3 and 5 as obvious over Seward in view of Davis *et al.* U.S. Patent No. 4,445,550 (“Davis”).

Applicant respectfully traverses these rejections insofar as they apply to claims 1-5, 9, and 10 as now amended.

*The Invention*

The present invention is directed to simple, flexible packages for beverages and other fluid materials with a pierceable sealing element that is easy to locate and pierce with a straw or other tube. Specification, Paragraphs [0005] and [0006] on pages 2 and 3.

Accordingly, independent claim 1 is directed to a container for fluid comprising first and second flexible panels that are sealed along their first and second side edges. A fitment is sealed between third edges of the panels, intermediate the side edges, and has an opening covered by a frangible element that may be pierced to access the fluid. Also, independent claim 9 is directed to a pouch for a non-carbonated beverage. The pouch comprises a flexible body with side edges and an opening. A fitment extends through the opening, is sealed to the body, and has a surface covered by a frangible material that may be pierced to access the beverage.

To advance prosecution, claims 1 and 9 have been amended, such that the invention is even more clearly distinguishable over the prior art. In particular, these claims now recite that the container (or pouch) is formed either (1) from a unitary sheet of material or (2) from separate sheets having bottom edges that are welded in the same manner as the side edges. These alternatives are clearly set forth in the specification, which states that the container may be formed from

a unitary sheet of material and welding side edges as shown in FIG. 1. However, it may also be formed from two separate webs of material, with the bottom edges of the sheets welded together in the same manner as the side edges.

Specification, paragraph [0020] on page 5.

FIGS. 1 and 2 depict the embodiment wherein the container or pouch is formed from a single sheet of material, whereas “FIGS. 5 through 11 disclose another fluid container . . . embodying this invention.” In this alternate embodiment, a “bottom panel 67 is also sealed to the front panel 63 and the rear panel 65 . . . at the bottom edges of the front and rear panels . . .”

Paragraph [0023] on page 6. As further stated in reference to FIGS. 5-11, “[t]he front panel 63, rear panel 65 and bottom panel 67 are produced from one or more webs of flexible material . . .”

Paragraph [0026] on page 7.

Additionally, independent claims 1 and 9 have been amended to recite that the container (or pouch) comprises a detachable straw. As stated,

Straw 141 may be attached to the exterior of the pouch, optionally encased in a protective sleeve, and adapted for detachment by the consumer or separately supplied.

Specification, paragraph [0021] on page 5.

In contrast to the invention of amended claims 1 and 9, both Seward and Davis fail to describe or even suggest a container formed from a unitary sheet or having bottom edges that are sealed or welded in the same manner as the side edges. Nor do either of these references describe or suggest a container comprising a detachable straw.

*The Disclosure of Seward*

Seward is directed to a “beverage sachet” that necessarily requires its contents, after being “mixed with an aqueous medium” to be then “released from the sachet through an opening made therein at or adjacent to the base seam [*i.e.*, the bottom edge].” Col. 1, line 63 to col. 2, line 10.

As described in Seward, the side edges are formed from “two sheets of a water- and air-impermeable sheet material 2 welded together at seams 4.” See the sentence bridging cols. 2 and 3. Also see FIG. 1, clearly illustrating the side seams, labeled “4.” However, to allow this release of the contents from the sachet, “[t]he bottom seam 6 is formed with a pressure-sensitive adhesive.” Col. 3, lines 2-4. In particular, for sealing the bottom edges of the sachet, “[t]he

pressure-sensitive adhesive is a pressure-sensitive lacquer which is sold by E.I. du Pont de Nemours under the trade mark "Surlyn." Col. 3, lines 23-35.

Thus, when hot water is introduced into the sachet, a separate sheet of filter material (*e.g.*, a polypropylene laminate) is forced downward to rupture the pressure sensitive bottom seal. This allows the sachet to be discharged. Col. 3, lines 26-31. Therefore, a "self-opening seal at the base of the sachet," also referred to as the "pressure-sensitive bottom seam," is **required**, according to Seward, for removal or discharge of the liquid contents. Col. 3, lines 42-43 and col. 4, lines 6-8.

Clearly, therefore, Seward does not disclose a container "having bottom edges that are welded in the same manner as the side edges," as recited in independent claims 1 and 9. In fact, if the bottom edge of the sachet described in Seward were sealed or welded in the same manner as the side edges (*i.e.*, without the pressure-sensitive seal), no liquid could be discharged. This would clearly **defeat the purpose** of the beverage-making and beverage-dispensing devices described in Seward.

Nor does Seward describe or suggest the alternate embodiment of a container (or pouch) that is formed from a unitary sheet of material. This is apparent from the requirement in Seward of at least one other separate sheet of filter material (*e.g.*, a polypropylene laminate) within the sachet. See the elements labeled "8" in FIGS. 2 and 5 and the "web of sheet material" that is "formed as two separate non-permeable sheets 32 and 34" in FIG. 6. Nothing in Seward suggests the removal of this separate web of filter material. Even so, forming a sachet according to Seward from a unitary sheet (as Applicant shows in FIGS. 1 and 2 of the specification) would not provide the necessary bottom seam for allowing liquid to escape, which is again inconsistent with the stated purpose of Seward (*i.e.*, to provide and dispense beverages).

Seward also fails to suggest the claimed feature of a detachable straw which, as Applicant describes, can be used to “access and consume or otherwise use the beverage or other fluid material within the pouch.” Specification, paragraph [0021] on page 5. This is apparent because, as discussed above, the liquid contents of Seward’s sachet are not discharged or consumed through Seward’s delivery channel 18, but instead through the “pressure-sensitive bottom seam.”

*The Disclosure of Davis*

Davis describes an aseptic flexible walled container having a rigid fitment with an outer flange that is secured to an opening in the wall of the container. Davis, Abstract. Davis is specifically cited as disclosing “known material . . . [suitable] for the intended use.” In particular, the Office Action refers to Davis’ disclosure of materials used for disk 28. Office Action, sentence bridging pages 3 and 4. However, these materials described in Davis are **not** for the same intended use as the materials used for the pierceable barrier seal recited in claim 3. Disc 28 is not meant to be a pierceable barrier, but rather closure or lid that is heat sealed onto a bag after it is filled. Col. 6, lines 54-57. Rather than being pierceable, this disc or lid is meant to provide a complete and effective seal. Col. 3, lines 54-61. The skilled artisan would therefore clearly not select the same materials, described in the art as useful for lid closures, for a pierceable barrier seal.

In any event, similar to Seward as discussed above, Davis does not suggest either of the claimed, alternative embodiments of a container (or pouch) (1) that is formed from a unitary sheet of material or (2) “having bottom edges that are welded in the same manner as the side edges.” Davis’ container instead has separate, multi-ply flexible walls that are superimposed and sealed together along their sides, creating (seamless) top and bottom walls which hold sterilized

food product. Col. 4, lines 53-58; col. 5, lines 19-21; and FIG. 13. Moreover, Davis does not suggest a detachable straw, as claimed, for access and consumption of the contents of the container. This would in fact be inconsistent with Davis' stated purpose of maintaining a completely aseptic environment, and in particular one in which the tube that projects into the container "is never exposed to an unsterile environment." See, for example, col. 3, lines 50-53.

For a claim to be anticipated, every element and limitation of the claimed invention must be found in a single prior art reference. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 58 USPQ2d 1286, 1291 (Fed.Cir. 2001). (emphasis added). Likewise, to establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 985, 180 U.S.P.Q. 580, 583 (C.C.P.A. 1974) (emphasis added). Seward, whether taken alone or in combination with Davis, does not meet these legal standards for anticipation or obviousness.

In particular, for the detailed reasons given above, Seward and/or Davis fail to describe or suggest a container (or pouch), as claimed, that is formed from either (1) a unitary sheet of material or (2) separate sheets having bottom edges that are welded in the same manner as the side edges. Additionally, neither of these references suggests a detachable straw attached to the container. Amended, independent claims 1 and 9, as well as their dependent claims 2-5 and 10, recite at least these features which are not suggested in Seward and/or Davis. The pending claims are therefore patentable over these references, whether cited under Section 102 or 103 of the Patent Statute.

Reconsideration and withdrawal of the rejections under 35 U.S.C. §§ 102 and 103 over Seward and/or Davis are respectfully requested.



**The Rejections over Bell, U.S. Patent No. 5,971,613 (“Bell”)**

The Office Action makes the following rejections of claims 1-3 and 6-15 under 35 U.S.C. § 103(a):

- Claims 1, 2, 7, 8-11, 13, and 14 as obvious over Bell in view of Anderson, U.S. Patent No. 6,595,391 (“Anderson”)
- Claims 3, 12, and 15 as obvious over Bell in view of Anderson, and further in view of Davis, and
- Claim 6 as obvious over Bell in view of Anderson, and further in view of Frisk, U.S. Patent No. 6,265,038 (“Frisk”).

Applicant respectfully traverses these rejections insofar as they apply to claims 1-3 and 6-15 as now amended.

The invention as set forth in amended, independent claims 1 and 9, is discussed above.

To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 985, 180 U.S.P.Q. 580, 583 (C.C.P.A. 1974) (emphasis added). The references Bell, Anderson, Davis, and Frisk, whether taken alone or in any combination, do not meet this legal standard for obviousness. The references all fail to describe or suggest at least the claimed feature of a detachable straw for accessing, consuming, or otherwise using the fluid within the container (or pouch).

The disclosure of Bell is directed to a bag container which utilizes a non-linear edge seal, allowing the bag to stand upright when filled. Bell, Abstract. For accessing contents within the bag, Bell describes a spout, pour nozzle, or other type of “closure arrangement for selective opening and reclosing.” Col. 4, lines 20-21; col. 7, lines 36-38; and col. 8, lines 49-50. The use

of a detachable straw for breaking a frangible element, according to the claimed container (or pouch), would therefore be clearly inconsistent with Bell's requirement for **selective opening and reclosing** of the bag. A detachable straw is also unsuitable for accessing soap, shampoo, lotion, or "particulates such as coffee beans and ground, grass seed, fertilizer, candies, salt grains and pellets," as described in Bell. See col. 3, lines 63-67.

Likewise, access or consumption of container contents, using a detachable straw, would render the containers described in Anderson and Davis unsuitable for their stated purpose of maintaining completely sterile conditions during both filling and withdrawal of these contents. See Anderson, for example, at col. 4, lines 18-35 and 53-56 and col. 5, lines 26-30 and refer to the discussion of Davis on page 15 above. Additionally, Frisk does not suggest a detachable straw for piercing a frangible element. Instead, the container contents are accessed using a "spout portion" which can be broken or twisted.

As stated above, Applicant's invention resides in a combination of features which provides a simple and flexible package for beverages with a pierceable sealing element that is easy to locate and pierce with a straw or other tube. This claimed combination is nowhere described or suggested in Bell, Anderson, Davis, and/or Frisk, whether taken alone or in any combination.

Also, with respect to claim 3, as discussed previously, the materials described in Davis are **not** for the same intended use as the materials used for the recited, pierceable barrier seal. Disc 28 is not a pierceable barrier, but instead a closure or lid that is heat sealed onto a bag after it is filled. Col. 6, lines 54-57. Rather than being pierceable, this disc or lid is meant to provide a complete and effective seal. Col. 3, lines 54-61. The skilled artisan would therefore clearly

not select the same materials, described in the art as useful for lid closures, for a pierceable barrier seal.

In any event, for the reasons stated above, Bell, Anderson, Davis, and/or Frisk fail to describe or suggest all features of amended independent claims 1 and 9, as well as their dependent claims 2, 3, 6-8, and 10-15. These claims are therefore patentable over the applied references.

Reconsideration and withdrawal of the rejections under 35 U.S.C. §§ 102 and 103 over Bell, Anderson, Davis, and/or Frisk are respectfully requested.

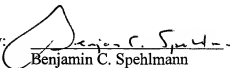
CONCLUSION

In view of the above amendments and remarks, all pending claims of this application are believed to be in condition for allowance. Acknowledgement of the same is respectfully requested.

This response is believed to completely address all of the substantive issues raised in the Office Action dated April 9, 2007.

Respectfully submitted,  
BANNER & WITCOFF, LTD.

Date: July 9, 2007

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Enclosure: REPLACEMENT DRAWING SHEET 2/5